Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter of	)	
Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc., (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Jersey	)	**CC Docket No. 01-347**

SUPPLEMENTAL COMMENTS OF THE
ASSOCIATION OF COMMUNICATIONS ENTERPRISES

The Association of Communications Enterprises (ASCENT"), through undersigned counsel and pursuant to Public Notice, DA 02-580 (released March 8, 2001) ("*Notice*"), hereby supplements its opposition to the application ("Application") filed by Verizon New Jersey Inc., Bell Atlantic Communications, Inc., (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc. (collectively "Verizon") for authority to originate interLATA traffic in the State of New Jersey, pursuant to Section 271 of the Communications Act of 1934 (the "Act"), as amended by the Telecommunications Act of 1996.[1] Specifically, ASCENT will demonstrate herein that the rates adopted by the New Jersey Board of Public Utilities ("NJBPU") for unbundled network elements ("UNE")[2] do not, in several critical respects, "fall within the reasonable range that a correct

[1] 47 U.S.C. § 271.

[2] In the Matter of the Board's Review of Unbundled Network Elements Rates, Terms and

application of TELRIC principles would produce,"[3] and thus cannot be relied upon to salvage Verizon's New Jersey bid for in-region, interLATA authority. [4]

Conditions of Bell Atlantic New Jersey, Inc. (Decision and Order), Docket No. TO00060356 (NJBPU March 6, 2002) ("NYBPU Final UNE Rate Order").

[3] Notice, DA 02-580 at 1.

[4] Although ASCENT did not address Verizon's unbundled local switching charges in New Jersey, it is worthy of note that the New York Public Service Commission ("NYPSC") recently determined that New York unbundled local switching charges comparable to those charged by Verizon in New Jersey were not TELRIC compliant. Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements (Order on Unbundled Network Element Rates), Case 98-C-1357 (January 28, 2002). Indeed, the NYPSC reduced Verizon's unbundled local switching charges in New York to levels less than half of those established by the NJBPU in the NYBPU Final UNE Rate Order.

As ASCENT demonstrated in its earlier-filed Opposition, the highly-inflated non-recurring charges ("NRCs") then assessed by Verizon for performing hot cuts in New Jersey stand as substantial barriers to the evolution of competitive providers from the UNE-Platform to the switched-based provision of local exchange service in the State, and hence grant of Verizon's New Jersey Application, absent a substantial reduction in the carrier's hot cut charges, would not be in the public interest. The inflated hot cut charges identified by ASCENT as barriers to conversion by competitors to a switch-based service vehicle were (i) the $159.76 and $227.39, respectively, assessed by Verizon to hot cut a two-wire link on a non-expedited[5] and expedited basis;[6] (ii) the $157.86 and $225.45, respectively, assessed by Verizon to hot cut a four-wire link on a non-expedited and expedited basis;[7] and (iii) the $154.73 and $220.96, respectively, assessed by Verizon to hot cut a DSL link on a non-expedited and expedited basis.[8]

All of these various charges have now been codified by the NJBPU in the *NYBPU Final UNE Rate Order*. Hence, the hot cut charges Verizon will assess pursuant to the *NYBPU Final UNE Rate Order* will continue to constitute significant barriers to the switch-based provision of service

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5 Additional charges could have included a premises visit charge ($73.36) charges, as well as a "manual intervention surcharge" ($15.02).

6 Additional charges could have included a premises visit charge ($95.59), as well as a "manual intervention surcharge" ($29.18). Per-loop charges for hot cutting additional two-wire links on a non-expedited and expedited basis were $73.01 and $103.23, respectively, without a premises visit.

7 Additional charges could have included a premises visit charge (non-expedited: $106.20; expedited: $138.38), as well as a "manual intervention surcharge" (non-expedited: $20.42; expedited: $29.18). Per-loop charges for hot cutting additional four-wire links on a non-expedited and expedited basis were $70.72 and $100.93, respectively, without a premises visit.

8 Additional charges could have included a premises visit charge (non-expedited: $73.39; expedited: $95.59), as well as a "manual intervention surcharge" (non-expedited: $15.53; expedited: $22.19). Per-loop charges for hot cutting additional DSL links on a non-expedited and expedited basis were $92.20 and $127.68, respectively, without a premises visit.

by competitors. Grant of Verizon's bid for New Jersey in-region, interLATA authority, absent a substantial reduction in the carrier's hot cut charges, remains contrary to the public interest.

As ASCENT demonstrated in its Opposition, one need only compare Verizon's New Jersey hot cut charges to the carrier's retail service rates in the State to appreciate the magnitude of the barrier created by the hot cut charges for competitive providers seeking to migrate traffic from the UNE-Platform to their own switches. Given existing caps on retail rates for basic residential [9]

[9] "The retail rate for basic local exchange service provided to residential customers in New Jersey is capped at $8.19 per month." Application at pg. 83, Appx A, Declaration of William E. Taylor, pg. 11. Flat rate residential service is priced by Verizon in New Jersey between $6.75 and $8.19 per month. Bell Atlantic - New Jersey, Inc. Tariff B.P.U.-N.J. No. 2, pp 30 - 35.

and business[10] service in New Jersey, ASCENT showed, a competitor would have to retain residential customers for approaching two years and business customers for at least a year -- assuming no premises visits and manual intervention surcharges were required as part of the hot cut process -- simply to recoup its cost of converting the customers from the UNE-Platform to its own switch. And, ASCENT continued, to the extent other UNE costs are factored into this analysis, the customer retention period required just to break even could easily extend out for another year or two, without consideration of the competitive provider's other costs of doing business, much less the costs associated with securing the customer in the first place.

[10] "[R]ates for ['retail business services in New Jersey'] . . . are . . . nearly double the residential rates." Application at pg. 84, Appx A, Declaration of William E. Taylor, pg. 12. Measured rate business service is priced by Verizon in New Jersey between \$7.07 and \$12.96 per month. Bell Atlantic - New Jersey, Inc. Tariff B.P.U.-N.J. No. 2, pp 30 - 35.

Even if one were to assume that the NJBPU's determinations regarding the costs properly associated with Verizon's performance of hot cuts, there exists, as the U.S. Court of Appeals for the District of Columbia Circuit has recently recognized, a range of total element long run incremental cost ("TELRIC")-compliant rates.[11] And the Commission could not be deemed to be acting in the public interest by sanctioning rates at the upper end of that range which hindered achievement of a goal identified by the Commission as critically important to the realization of the Congressional vision of a fully competitive local exchange market. As ASCENT emphasized in its Opposition, the Commission has steadfastly declared its view that "the greatest long term benefits to consumers will arise out of competition by entities using their own facilities."[12] To this end, Chairman Powell has recently indicated that the Commission will "focus . . . on both so-called 'facilities-based'

competition and competition from newer entrants who supplement their own facilities with network elements leased from the incumbent."[13]

ASCENT submits, however, that rates which exceed those charged by Verizon in other States by dramatic margins cannot be deemed to "fall within the reasonable range that a correct application of TELRIC principles would produce." The record reflects that Verizon's New Jersey hot cut charges exceed those in other Verizon states such as Delaware, Maryland, Massachusetts, Pennsylvania, and Virginia by between seven times (Delaware) and nearly forty times

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[11] Sprint Communications Co. v. FCC, 271 F.3d 549 (D.C. Cir. 2001).

[12] Promotion of Competitive Networks in Local Telecommunications Markets (First Report and Order), 15 FCC Rcd. 22983, ¶ 4 (2000) (*subsequent history omitted*).

[13] Separate Statement of Commissioner Michael K. Powell in CC Docket Nos. 01-337 and 01-338, issued December 12, 2001. *See also* Separate Statement of Commissioner Kevin J. Martin in CC Docket No. 01-338, issued December 12, 2001 ("promotion of facilities-based competition should be a fundamental

(Pennsylvania).[14] Even in New York, where hot cut rates briefly approximated those charged by Verizon in New Jersey, charges currently associated with performance of hot cuts are less than one quarter of Verizon's New Jersey hot cut charges.[15] It is inconceivable that the cost to Verizon of performing a hot cut is so much higher in New Jersey than in other Verizon States that it could justify price differentials of this magnitude.

As ASCENT stressed in its Opposition, care must be taken by the Commission to prevent actions by incumbent LECs which are designed to artificially render investment by competitors in facilities uneconomical. Grant of in-region, interLATA authority simply cannot be deemed to be in the public interest when the applying carrier has erected and maintains a pricing barrier to investment by UNE-Platform-based service providers in switching facilities.

By reason of the foregoing, the Association of Communications Enterprises urges the Commission to deny as premature the Application filed by filed by Verizon New Jersey Inc., Bell Atlantic Communications, Inc., (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services

Inc.,(collectively "Verizon") for authority to provide in-region, interLATA service in the State of New Jersey, unless and until Verizon effects substantial reductions in the charges associated with hot cuts in New Jersey.

Respectfully submitted,

ASSOCIATION OF COMMUNICATIONS ENTERPRISES

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priority for . . . [the] Commission.").

14 Comments of AT&T Corp. at Declaration of John Sczepanski.

15 New York Public Service Commission, Summary of the Verizon Incentive Plan.

By: /s/

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March 13, 2002

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CERTIFICATE OF SERVICE

I, Charles C. Hunter, do hereby certify that a true a correct copy of the foregoing Supplemental Comments of the Association of Communications Enterprises has been served by the First Class Mail, postage prepaid, on the individuals listed below, on this 13th day of March, 2002:

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